

Senate Engrossed

**FILED**

**KEN BENNETT**

**SECRETARY OF STATE**

State of Arizona  
Senate  
Fiftieth Legislature  
First Regular Session  
2011

CHAPTER 151

# **SENATE BILL 1315**

AN ACT

AMENDING SECTIONS 32-826, 32-852.01 AND 32-854.01, ARIZONA REVISED STATUTES;  
RELATING TO THE STATE BOARD OF PODIATRY EXAMINERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 32-826, Arizona Revised Statutes, is amended to  
3 read:

4 32-826. Issuance of license

5 A. The board shall issue a license to practice podiatry to every  
6 person who receives a passing grade on the examination, pays the required fee  
7 and furnishes satisfactory proof of successful completion of a one-year  
8 internship program.

9 ~~B. The board shall issue a provisional license to practice podiatry to~~  
10 ~~every person who receives a passing grade on the examination and pays the~~  
11 ~~required fee but who has not completed the one-year internship program~~  
12 ~~required by subsection A. Such provisional license shall be valid for a term~~  
13 ~~of not more than one year and shall be non-renewable. The board shall delay~~  
14 ~~the issuance of a provisional license until the applicant notifies the board~~  
15 ~~of his intent to practice in this state within thirty days. The board shall~~  
16 ~~adopt rules which provide for supervision by the board of each provisional~~  
17 ~~licensee who practices in this state. The board may substitute practice~~  
18 ~~deemed equivalent by the board to an internship for the one-year internship~~  
19 ~~required by subsection A for full licensure.~~

20 ~~C. B.~~ Each license shall be signed by the president and secretary and  
21 bear the seal of the board.

22 ~~D. C.~~ The board shall deny a license to an applicant who satisfies  
23 all of the licensing requirements of this article if that applicant does not  
24 submit the license issuance fee within twelve months after taking the  
25 examinations. An applicant who fails to submit the fee within this time is  
26 required to reapply for licensure pursuant to this article.

27 Sec. 2. Section 32-852.01, Arizona Revised Statutes, is amended to  
28 read:

29 32-852.01. Investigations; duty to report; unprofessional  
30 conduct hearing; decision of board; appeal

31 A. The board on its own motion may investigate any evidence that  
32 appears to show that a podiatrist is or may be guilty of a violation of  
33 section 32-852. Any podiatrist or the Arizona podiatry association shall, or  
34 any other person may, report to the board any information the podiatrist,  
35 association or person may have that appears to show that a podiatrist is or  
36 may be guilty of unprofessional conduct or is or may be guilty of practice  
37 without regard for the safety and welfare of the public. Any podiatrist,  
38 association, health care institution or other person that reports or provides  
39 information to the board in good faith is not subject to civil liability and  
40 the name of the reporter shall not be disclosed unless the information is  
41 essential to the investigative proceedings conducted pursuant to this  
42 section. It is an act of unprofessional conduct for any podiatrist to fail  
43 to report as required by this subsection. THE CHIEF EXECUTIVE OFFICER, THE  
44 MEDICAL DIRECTOR OR THE MEDICAL CHIEF OF STAFF OF A HEALTH CARE INSTITUTION  
45 SHALL INFORM THE BOARD IF THE PRIVILEGES OF A PODIATRIST TO PRACTICE IN THAT

1 HEALTH CARE INSTITUTION ARE DENIED, REVOKED, SUSPENDED OR LIMITED BECAUSE OF  
2 ACTIONS BY THE PODIATRIST THAT APPEAR TO SHOW THAT THE PODIATRIST IS OR MAY  
3 BE MEDICALLY INCOMPETENT, IS OR MAY BE GUILTY OF UNPROFESSIONAL CONDUCT OR IS  
4 OR MAY BE MENTALLY OR PHYSICALLY UNABLE TO SAFELY ENGAGE IN THE PRACTICE OF  
5 PODIATRY, ALONG WITH A GENERAL STATEMENT OF THE REASONS, INCLUDING PATIENT  
6 CHART NUMBERS, THAT LED THE HEALTH CARE INSTITUTION TO TAKE THE ACTION. THE  
7 CHIEF EXECUTIVE OFFICER, THE MEDICAL DIRECTOR OR THE MEDICAL CHIEF OF STAFF  
8 OF A HEALTH CARE INSTITUTION SHALL INFORM THE BOARD IF A PODIATRIST UNDER  
9 INVESTIGATION RESIGNS OR IF A PODIATRIST RESIGNS IN LIEU OF DISCIPLINARY  
10 ACTION BY THE HEALTH CARE INSTITUTION. NOTIFICATION SHALL INCLUDE A GENERAL  
11 STATEMENT OF THE REASONS FOR THE RESIGNATION, INCLUDING PATIENT CHART  
12 NUMBERS. THE BOARD SHALL INFORM ALL APPROPRIATE HEALTH CARE INSTITUTIONS IN  
13 THIS STATE AS DEFINED IN SECTION 36-401 AND THE ARIZONA HEALTH CARE COST  
14 CONTAINMENT SYSTEM ADMINISTRATION OF A RESIGNATION, DENIAL, REVOCATION,  
15 SUSPENSION OR LIMITATION, AND THE GENERAL REASON FOR THAT ACTION, WITHOUT  
16 DIVULGING THE NAME OF THE REPORTING HEALTH CARE INSTITUTION. A PERSON WHO  
17 REPORTS INFORMATION IN GOOD FAITH PURSUANT TO THIS SUBSECTION IS NOT SUBJECT  
18 TO CIVIL LIABILITY.

19 B. Based on information received pursuant to subsection A of this  
20 section, the board may order a summary suspension of a license pending formal  
21 proceedings for license revocation or other disciplinary action if the board  
22 finds that the protection of the public health or safety requires emergency  
23 action. The board shall serve the licensee with a written notice that states  
24 the charges and that the licensee is entitled to a formal hearing before the  
25 board or an administrative law judge within sixty days.

26 C. If the board finds after completing its investigation that the  
27 information provided pursuant to subsection A of this section is not of  
28 sufficient seriousness to merit direct action against the license of the  
29 podiatrist, it may take any of the following actions:

30 1. Dismiss if, in the opinion of the board, the information is without  
31 merit.

32 2. File a letter of concern.

33 3. Issue a nondisciplinary order requiring the licensee to complete a  
34 prescribed number of hours of continuing education in an area or areas  
35 prescribed by the board to provide the licensee with the necessary  
36 understanding of current developments, skills, procedures or treatment.

37 D. If the board finds after completing its investigation that the  
38 information is or may be true, the board may request an informal interview  
39 HEARING with the licensee. If the licensee refuses the invitation or accepts  
40 the invitation and the results of the interview HEARING indicate suspension  
41 or revocation of the license might be in order, the board shall issue a  
42 complaint and conduct a formal hearing pursuant to title 41, chapter 6,  
43 article 10. If the board finds at the informal interview HEARING that the  
44 information provided under subsection A of this section is true but is not of

1 sufficient seriousness to merit suspension or revocation of the license, it  
2 may take one or more of the following actions:

3 1. File a letter of concern.  
4 2. Issue a decree of censure.  
5 3. Fix a period and terms of probation best adapted to protect the  
6 public health and safety and rehabilitate the licensee. If a licensee fails  
7 to comply with the terms of probation the board may file a complaint and hold  
8 a formal hearing pursuant to this section.

9 4. Impose a civil penalty of not more than two thousand dollars for  
10 each violation. The board shall deposit, pursuant to sections 35-146 and  
11 35-147, all monies collected pursuant to this paragraph in the state general  
12 fund.

13 5. Issue a nondisciplinary order requiring the licensee to complete a  
14 prescribed number of hours of continuing education in an area or areas  
15 prescribed by the board to provide the licensee with the necessary  
16 understanding of current developments, skills, procedures or treatment.

17 E. If the board believes that the charge is or may be true, the board  
18 shall serve on the licensee a summons and complaint that fully states the  
19 conduct or inability concerned and the time and place of the hearing. The  
20 board shall schedule the hearing not less than thirty days after the date of  
21 the summons and complaint.

22 F. The board may require that the licensee under investigation undergo  
23 any mental and physical examination and may conduct any investigation,  
24 including the taking of depositions, necessary to fully inform itself with  
25 respect to the complaint.

26 G. If the licensee wishes to be present at the hearing in person or by  
27 representation, or both, the licensee shall file with the board a written and  
28 verified answer to the charges within twenty days after service of the  
29 summons and complaint. A licensee who complies with this subsection may be  
30 present at the hearing with any witnesses of the licensee's choice.

31 H. The board may issue subpoenas for any witnesses, documents and  
32 other evidence it may need and for any witnesses, documents and other  
33 evidence the licensee may request. The superior court may hold a person who  
34 refuses to obey a subpoena in contempt of court.

35 I. Service of the summons and complaint shall be as provided for  
36 service of the summons and complaint in civil cases.

37 J. Service of subpoenas for witnesses shall be as provided by law for  
38 the service of subpoenas generally.

39 K. The board may administer the oath to all witnesses, shall keep a  
40 written transcript of all oral testimony submitted at the hearing and shall  
41 keep the original or a copy of all other evidence submitted. The board shall  
42 make copies of the transcript available to the licensee at that person's  
43 expense and without charge to the court in which the appeal may be taken. At  
44 all hearings the board may waive the technical rules of evidence.

1 L. A licensee who, after a hearing held pursuant to this section, is  
2 found to be guilty of a violation of section 32-852 or this section is  
3 subject to censure, probation as provided in this section, suspension of a  
4 license or revocation of a license, or any combination of these, for a period  
5 of time or permanently and under any conditions the board deems appropriate  
6 for the protection of the public health and safety and just in the  
7 circumstances. The board may file a letter of concern if it finds that the  
8 violation is not of sufficient seriousness to merit censure, probation or  
9 suspension or revocation of a license. The board may also issue a  
10 nondisciplinary order requiring the licensee to complete a prescribed number  
11 of hours of continuing education in an area or areas prescribed by the board  
12 to provide the licensee with the necessary understanding of current  
13 developments, skills, procedures or treatment.

14 M. Patient records, including clinical records, medical reports,  
15 laboratory statements and reports, any file, film, other report or oral  
16 statement relating to diagnostic findings or treatment of patients, any  
17 information from which a patient or the patient's family might be identified  
18 or information received and records kept by the board as a result of the  
19 investigation procedure outlined in this chapter are not available to the  
20 public.

21 N. Except as provided in section 41-1092.08, subsection H, final  
22 decisions of the board are subject to judicial review pursuant to title 12,  
23 chapter 7, article 6.

24 O. This section and any other law relating to a privileged  
25 communication do not apply to investigations or proceedings conducted  
26 pursuant to this chapter. The board and its employees, agents and  
27 representatives shall keep in confidence the names of any patients whose  
28 records are reviewed during the course of investigations and proceedings  
29 pursuant to this chapter.

30 P. If the board acts to modify any podiatrist's prescription writing  
31 privileges, it shall immediately notify the state board of pharmacy of the  
32 modification.

33 Q. A letter of concern is a public document and may be used in future  
34 disciplinary actions against a podiatrist.

35 Sec. 3. Section 32-854.01, Arizona Revised Statutes, is amended to  
36 read:

37 32-854.01. Unprofessional conduct

38 Unprofessional conduct includes the following conduct, whether it  
39 occurs in this state or elsewhere:

40 1. Requesting, listing, accepting or receiving any rebate or  
41 commission for prescribing or recommending any footwear, drug, medicine, or  
42 other article to the licensee's patients.

1           2. Prescribing, dispensing or pretending to use, in treating any  
2 patient, any secret remedial agent, or manifesting or promoting its use in  
3 any way, or guaranteeing or implying to guarantee any treatment, therapy or  
4 remedy.

5           3. Representing that a disease or infirmity can be permanently cured,  
6 or that any disease, ailments or infirmities can be cured by secret method,  
7 procedure, treatment, medicine or devices, if this is not true.

8           4. Practicing podiatry under a trade name, under the name of another  
9 podiatrist, under any other name than that which appears on the  
10 practitioner's license, or under any title ~~which~~ THAT misrepresents the  
11 practice of podiatry.

12           5. Advertising in a false, deceptive or misleading manner or  
13 advertising the quality of podiatric service.

14           6. Employing a solicitor to obtain business.

15           7. Fee splitting under any guise whatsoever.

16           8. Failing to report as required in section 32-852.01, subsection A.

17           9. Failing to obtain written informed consent from a patient before  
18 the licensee performs any surgical procedure on the patient.

19           10. Committing a felony, whether or not involving moral turpitude, or a  
20 misdemeanor involving moral turpitude. In either case, conviction by any  
21 court of competent jurisdiction is conclusive evidence that the licensee  
22 committed the crime.

23           11. Failing or refusing to maintain adequate records on a patient for  
24 at least seven years or failing or refusing to make the records available to  
25 a physician or another podiatrist within twenty-one days after request and  
26 receipt of proper authorization.

27           12. Habitual intemperance in the use of alcohol or habitual substance  
28 abuse.

29           13. Use of controlled substances or prescription-only drugs except if  
30 provided by a physician for use during a prescribed lawful course of  
31 treatment.

32           14. Prescribing controlled substances to members of the podiatrist's  
33 immediate family.

34           15. Providing any controlled substance or prescription-only drug for  
35 other than accepted therapeutic purposes.

36           16. Gross malpractice, repeated malpractice or any malpractice  
37 resulting in the death of a patient.

38           17. Refusing to divulge to the board on demand the means, method,  
39 procedure, modality of treatment or medicine used in the treatment of a  
40 disease, injury, ailment or infirmity.

41           18. Violating any federal or state law applicable to the practice of  
42 podiatry.

43           19. The refusal, revocation or suspension of a license by any other  
44 licensing jurisdiction for inability to safely and skillfully practice  
45 podiatry or for unprofessional conduct as defined by that jurisdiction which

1 THAT directly or indirectly corresponds to any act of unprofessional conduct  
2 as prescribed by this section or any act under section 32-852.

3 20. Any conduct or practice ~~which~~ THAT is or might be harmful or  
4 dangerous to the health of the patient.

5 21. Violating any formal order, probation or stipulation issued by the  
6 board pursuant to this chapter.

7 22. Violating or attempting to violate, directly or indirectly, or  
8 assisting in or abetting the violation of or conspiring to violate any  
9 provision of this chapter.

10 23. Charging or collecting a clearly excessive fee. In determining the  
11 reasonableness of a fee, the fee customarily charged in the locality for  
12 similar services shall be considered in light of modifying factors, such as  
13 the time required, the complexity of the service and the skill requisite to  
14 perform the service properly. This paragraph does not apply if there is a  
15 clear written contract for a fixed fee between the podiatrist and the patient  
16 ~~which~~ THAT has been entered into before the licensee provides the service.

17 24. OBTAINING A FEE BY FRAUD, DECEIT OR MISREPRESENTATION.

18 25. CHARGING A FEE FOR SERVICES NOT RENDERED.

19 ~~24.~~ 26. Failing to dispense drugs and devices in compliance with  
20 article 4 of this chapter.

APPROVED BY THE GOVERNOR APRIL 18, 2011.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 18, 2011.

Passed the House April 11, 2011,

by the following vote: 58 Ayes,

1 Nays, 1 Not Voting

[Signature]  
Speaker of the House  
Pro Tempore  
Cheryl Laube  
Chief Clerk of the House

Passed the Senate February 28, 2011,

by the following vote: 28 Ayes,

1 Nays, 1 Not Voting

[Signature]  
President of the Senate  
Chamion Billings  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

12 day of April, 2011,

at 1:50 o'clock P. M.

[Signature]  
Secretary to the Governor

Approved this 18th day of

April, 2011,

at 10:10 o'clock P. M.

[Signature]  
Governor of Arizona

S.B. 1315

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 18th day of April, 2011,

at 12:19 o'clock P. M.

[Signature]  
Secretary of State